

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

DOREEN LEEDS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
GEORGE A. CALE, JR.,	)	
THOMAS P. GORDON,	)	C.A. No. 02-1475-SLR
New Castle County Executive,	)	
COLONEL JOHN L. CUNNINGHAM,	)	
County of New Castle,	)	
JOHN DOES 1-5 (unknown	)	
officers, agents, employees	)	
of the County of New Castle)	)	
	)	
Defendants.	)	

**MEMORANDUM ORDER**

**I. INTRODUCTION**

On September 13, 2002, plaintiff Doreen Leeds filed this action against defendants George A. Cale, Jr., Thomas P. Gordon, New Castle County Executive, Colonel John L. Cunningham, the County of New Castle, and John Does 1-5, alleging violations of 42 U.S.C. §§ 1981, 1983, 1985, 1986, 1988 and 38 U.S.C. §§ 1331, 1343. This court has jurisdiction pursuant to 28 U.S.C. § 1391(b). Presently before the court is defendants' motion to dismiss. (D.I. 11) Due to defendants presenting matters outside the pleadings to the court in support of the motion to dismiss, the court will review defendants' motion as a motion for summary judgment pursuant to Fed. R. Civ. P. 12(b) and 56(b). For the reasons that follow, the court shall deny defendants' motion for

summary judgment.

## **II. BACKGROUND**

Plaintiff Leeds was stopped by defendant Officer Cale for a traffic violation on February 8, 2001, at approximately 4:00 pm, at the intersection of Route 896 and Churchman Road, Middletown, New Castle County, Delaware. (D.I. 1) Simultaneously, defendant stopped another motorist, Susan Hutchinson. (Id.) Defendant detained both motorists and advised them that they each had disregarded a traffic control device in violation of Delaware Statute 21:4107. (Id.) Both drivers stated that they believed they violated no law. (Id.) Upon defendant's request, plaintiff and Hutchinson produced insurance, registration, and driver's license documentation. (Id.)

Plaintiff alleges that defendant took the documents, returned to his vehicle, and proceeded to drink coffee and read the newspaper for approximately twenty to thirty minutes. (Id.) Defendant then returned to plaintiff's vehicle and issued a ticket for disregarding a traffic control device. (Id.) Plaintiff contends that she wished to be a witness for Hutchinson, and attempted to give Hutchinson her name, address, and phone number. Defendant ordered plaintiff away from Hutchinson's vehicle, to which plaintiff said something in response. (Id.) Plaintiff alleges that defendant then grabbed her and beat her head against Hutchinson's vehicle. (Id.) Defendant returned to his vehicle to obtain his gun and

handcuffs. Plaintiff alleges that after being beaten, she entered Hutchinson's vehicle for safety, but was ordered by defendant to exit the vehicle. (Id.) After exiting the vehicle, plaintiff alleges that defendant threw her to the ground, pulled her shirt over her head, struck her in the face, and treated her in a violent and inappropriate manner while unlawfully arresting her. (Id.) Plaintiff further alleges that she was taken to the police station and later forced to receive medical attention in a detention room at Christiana Hospital. (Id.) Defendant allegedly degraded and verbally taunted plaintiff at the police station, the hospital, and thereafter that evening. (Id.) Plaintiff was subsequently charged with offensive touching of a law enforcement officer, resisting arrest, and disorderly conduct in violation of Title II, Section 60, 1257 and 1301(1)(a) of the Delaware Code. (Id.)

Officer Cale recalls the facts quite differently. He alleges that plaintiff exited her vehicle and screamed at him, claiming to have done nothing wrong. (D.I. 12) He then directed plaintiff to produce her license, registration and insurance card. (Id.) Plaintiff obtained such information and began to approach Hutchinson's vehicle. (Id.) After three requests by defendant for plaintiff to return to her vehicle, plaintiff finally complied. (Id.) Defendant proceeded to plaintiff's vehicle and explained that he was issuing plaintiff a citation for disregarding a traffic control device. (Id.) Plaintiff

allegedly became belligerent, began screaming, claimed harassment, claimed she was being stopped because she was white, and because defendant wanted to have his way with her. (Id.) Plaintiff then attempted to exit her vehicle and defendant directed her to stay in her vehicle until the citation was issued. (Id.) Defendant asked for plaintiff's phone number, which plaintiff refused to give. (Id.) Defendant gave plaintiff a copy of the citation and told her she was free to leave. (Id.) Plaintiff then exited her vehicle and followed defendant to Hutchinson's vehicle. (Id.) Defendant again directed plaintiff to return to her vehicle. (Id.) Plaintiff ignored defendant's direction and allegedly pushed him in the back. (Id.) Defendant told plaintiff she was under arrest. (Id.) Plaintiff again refused to return to her vehicle and a struggle ensued. (Id.) Plaintiff entered Hutchinson's vehicle and refused to exit. (Id.) Plaintiff eventually exited Hutchinson's vehicle and ran towards her own vehicle. (Id.) Defendant prevented plaintiff from entering her vehicle and attempted to effect her arrest. Defendant guided plaintiff into defendant's vehicle. (Id.) Plaintiff resisted and defendant applied manual tactics to effect plaintiff's arrest. (Id.) Other officers then responded to the scene to assist in handcuffing plaintiff. (Id.)

### **III. STANDARD OF REVIEW**

A court shall grant summary judgment only if "the pleadings, depositions, answers to interrogatories, and admissions on file,

together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party bears the burden of proving that no genuine issue of material fact exists. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 n.10 (1986). "Facts that could alter the outcome are 'material,' and disputes are 'genuine' if evidence exists from which a rational person could conclude that the position of the person with the burden of proof on the disputed issue is correct." Horowitz v. Fed. Kemper Life Assurance Co., 57 F.3d 300, 302 n.1 (3d Cir. 1995) (internal citations omitted). If the moving party has demonstrated an absence of material fact, the nonmoving party then "must come forward with 'specific facts showing that there is a genuine issue for trial.'" Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e)). The court will "view the underlying facts and all reasonable inferences therefrom in the light most favorable to the party opposing the motion." Pa. Coal Ass'n v. Babbitt, 63 F.3d 231, 236 (3d Cir. 1995). The mere existence of some evidence in support of the nonmoving party, however, will not be sufficient for denial of a motion for summary judgment; there must be enough evidence to enable a jury reasonably to find for the nonmoving party on that issue. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). If the nonmoving party fails to make a sufficient showing on an essential element of its

case with respect to which it has the burden of proof, the moving party is entitled to judgment as a matter of law. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986).

#### **IV. DISCUSSION**

The facts alleged by plaintiff and defendants are diametrically opposed. Therefore, the court concludes that there are genuine issues of material fact that need to be resolved at trial. As such, defendants' motion for summary judgment is denied.

#### **V. CONCLUSION**

At Wilmington, this 12th day of June, 2003, for the reasons stated;

IT IS ORDERED that defendants' motion for summary judgment is denied.

Sue L. Robinson  
United States District Judge